

Commerce Committee

Friday, April 23, 2021
8:00 AM - 9:30 AM
Webster Hall (212 Knott)

Meeting Packet

Chris Sprowls
Speaker

Blaise Ingoglia
Chair

The Florida House of Representatives

Commerce Committee

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Meeting Agenda

Friday, April 23, 2021
8:00 AM – 9:30 AM
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- HB 317 Public Accountancy by Caruso

Consideration of the following proposed committee substitute(s):

- PCS for CS/HB 305 – Insurance

V. Closing Remarks

VI. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 317 Public Accountancy
SPONSOR(S): Caruso and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 616

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	16 Y, 0 N	Wright	Anstead
2) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

In Florida, public accountancy is regulated by the Board of Accountancy under the Department of Business and Professional Regulation. The practice of public accountancy includes offering to the public the performance of services involving audits, reviews, compilations, tax preparation, management advisory or consulting services, or preparation of financial statements. In order to practice public accountancy, a person must be licensed as a certified public accountant (CPA).

Every biennium, CPAs must complete 80 hours of continuing professional education (CPE), by board rule. At least 5 percent of the total hours required by the board must be in the subject of public accounting ethics.

Applicants for CPA licensure by endorsement must be of good moral character; complete certain CPE requirements; and either not be licensed but have passed an equivalent examination in another state or territory, or hold a license from another state or territory if the criteria issuance is equivalent to that of Florida.

Inactive status for CPA licenses can be initiated voluntarily by the licensee, or for failure to meet the CPE license renewal requirements. The board is authorized to adopt rules establishing the minimum requirements for placing a license on inactive status, renewing an inactive license, and reactivating the inactive license. Currently, a retired status for CPA licensure does not exist.

The bill:

- Clarifies the licensure by endorsement provision for applicants that have passed an examination but do not hold a license in “another” state or territory, to instead not require a license in “any” state or territory;
- Allows nonresidents seeking CPA license renewal to satisfy the CPE requirements (except for the ethics component), with either the applicable CPE requirements in the state in which the applicant’s office is located, or Florida CPE requirements, if the other state has no CPE license renewal requirements;
- Specifies that a “majority” of the total CPE hours required for ethics training must include a review of certain provisions and related administrative rules; and
- Creates a “retired status” for active or inactive CPA licensees over 55 years old;

The bill does not have a fiscal impact on state or local governments.

The bill has an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Florida Board of Accounting (board) in the Department of Business and Professional Regulation (DBPR) is the agency responsible for regulating and licensing more than 35,000 active and inactive certified public accountants (CPA) and more than 5,400 accounting firms in Florida. The Division of Certified Public Accounting provides administrative support to the 9-member board, which consists of 7 CPAs and 2 laypersons.[1]

To engage in the practice of public accounting, an individual or firm must be licensed and business entities must meet certain formation requirements.[2]

The "practice of public accountancy" includes offering to the public the performance of services involving audits, reviews, compilations, tax preparation, management advisory or consulting services, or preparation of financial statements.[3]

The initial licensing fee for a CPA license is $50, and the biennial renewal fee is $105.[4]

A person may be charged with a first-degree misdemeanor if they are not a licensed CPA and they perform:[5]

- Services involving the expression of an opinion on financial statements,
- The attestation as an expert in accountancy to the reliability or fairness of presentation of financial information,
- The utilization of any form of opinion or financial statements that provide a level of assurance,
- The utilization of any form of disclaimer of opinion which conveys an assurance of reliability as to matters not specifically disclaimed, or
- The expression of an opinion on the reliability of an assertion by one party for the use by a third party.

License by Endorsement

An applicant is eligible for licensure by endorsement if the applicant:[6]

- is of good moral character;
- has completed 80 hours of continuing professional education (CPE) if it has been at least 2 years since passing the licensing examination;[7] and either:
    - is not licensed, but has otherwise met the licensing requirements and has passed a licensing examination that is substantially equivalent to the Florida examination; or
    - holds a valid license to practice public accounting issued by another state or territory of the United States, if the criteria for issuance of such license are substantially equivalent to a Florida license or is otherwise permitted.

[1] S. 473.303, F.S.
[2] S. 473.302, F.S.
[3] S. 473.302(8), F.S.
[4] Email from Roger Scarborough, Director of the Division of Public Accounting, Florida Department of Business and Professional Regulation, RE: CPAs (Feb. 8, 2021).
[5] S. 473.322(1)(c), F.S.
[6] S. 468.8414(3), (4), F.S.
[7] R. 61H1-29.003, F.A.C.

Continuing Education

CPAs are required to complete 80 hours[8] of CPE in public accounting subjects every 2 years to renew their license. The board has the authority to prescribe by rule additional CPE hours, not to exceed 25 percent of the total hours required, for failure to complete the hours required for renewal by the end of the reestablishment period.[9]

At least 25 percent of the total hours required by the board must be in accounting-related and auditing-related subjects, as distinguished from other subjects that include federal and local taxation matters and management services.[10]

Five percent of the total hours required by the board must be in ethics applicable to the practice of public accounting. This requirement must be administered by providers approved by the board and include a review of the provisions of ch. 455, F.S., ch. 473, F.S., and the related administrative rules.[11]

Inactive Licenses

CPAs are authorized to request their license be placed on inactive status, or the licensee may be placed on inactive status for failing to meet the CPE requirements for license renewal. The board is authorized to adopt rules establishing the minimum requirements for placing a license on inactive status, renewing an inactive license, and reactivating the inactive license.[12]

The fee for reactivating an inactive CPA license is $380.[13] The maximum CPE requirements for reactivating an inactive or delinquent license are 120 hours, including:

- At least 30 hours in accounting-related and auditing-related subjects;
- Not more than 30 hours in behavioral subjects; and
- A minimum of 8 hours in ethics subjects approved by the board.

Retired Status

The American Institute of CPAs (AICPA) estimates that approximately 75 percent of its members will be eligible to retire by the year 2020. According to AICPA, “many of these retirees are well respected business leaders in their communities who would like to find ways to continue to be of service, without necessarily remaining an active CPA in practice.”[14]

The AICPA provides a uniform retired CPA status in their model rules that states may adopt allowing retired CPAs to offer a limited array of volunteer, uncompensated services to the public. Inactive CPAs, of at least 55 years of age are allowed to refer to themselves as “Retired-CPAs” and register as such with their state board of accountancy. They are able to participate in activities such as volunteer tax preparation services, government-sponsored business mentoring programs, and on boards of nonprofit organizations.[15]

[8] S. 473.312(1)(a), F.S. allows the board to require between 48 and 80 hours of CPE every 2 years. The board requires 80 hours in r. 61H1-33.003, F.A.C.
[9] S. 473.312(1)(a), F.S.
[10] *Id*.
[11] S. 473.312(1)(b),(c), F.S.
[12] S. 473.313, F.S.
[13] R. 61H1-31.006, F.A.C.
[14] American Institute of Certified Public Accountants, https://www.aicpa.org/advocacy/state/retiredcpastatusexposuredraft.html.
[15] *Id.*

Effect of the Bill

The bill revises the CPA license by endorsement provision for applicants that have passed an examination but do not hold a license in “another” state or territory. The bill simply changes “another” state or territory to “any” state or territory.

The bill allows nonresident CPA licensees who are seeking renewal of a license in this state to satisfy the CPE requirements (except for the ethics component), if the nonresident licensee has complied with applicable CPE requirements in the state in which his or her office is located. If the state in which the nonresident licensee's office is located has no CPE license renewal requirements, the nonresident licensee must comply with Florida CPE requirements.

The bill specifies that a “majority” of the total CPE hours required for ethics training must include a review of the provisions of ch. 455, F.S., ch. 473, F.S., and the related administrative rules. Currently, no amount is specified.

The bill creates a “retired status” for CPA licensees. The bill defines a "retired licensee" as a licensee whose license has been placed in retired status by the department.

Retired status license applicants are required to:

- Be at least 55 years old;
- Hold a current active or inactive CPA license;
- Apply for the status to DBPR; and
- Be in good standing and not the subject of any sanction or disciplinary action.

Applications must be prescribed by the board and the applicant must attest that they have no association with accounting or any of the services described in s. 473.302(8)(a), (c), or (d), F.S.

Licensees granted retired status who reenter the workforce in a position that has an association with accounting or any of the services described in s. 473.302(8)(a), (c), or (d), F.S., automatically lose the retired status except for the uncompensated volunteer services that retirees are allowed to participate in.

Licensees granted retired status are allowed to:

- Serve without compensation on a board of directors or board of trustees;
- Provide volunteer tax preparation services;
- Participate in a government-sponsored business mentoring program such as the Internal Revenue Service's Volunteer Income Tax Assistance program or the Small Business Administration's SCORE program; and
- Participate in an advisory role for a similar charitable, civic, or other nonprofit organization.

The board must require retired licensees to affirm in writing their understanding of the limited types of activities allowed while in retired status and their professional duty to ensure competency to participate in the activities.

Retired licensees are authorized to:

- Accept routine reimbursement for actual costs of travel and meals associated with volunteer services or de minimis per diem amounts paid to the licensee to cover such expenses as allowed by law; and
- Use the title of "retired CPA" on business cards, letterhead or other printed or electronic documents as long as it is used in a manner that is not confusing to the public.

Retired licensees are not required to:

- Have a certificate issued with the word "retired" on the certificate; or
- Maintain the CPE requirements under s. 473.312, F.S.

Retired licensees are prohibited from offering or rendering professional services that require:

- The licensee’s signature; and
- Use of the CPA title, regardless of whether the word "retired" is attached to such title.

Retired licensees may reactivate their license in a conditional manner determined by the board. The conditions of reactivation must require the payment of fees and the completion of any CPE requirements.

The bill has an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1	Amends s. 473.308, F.S., revising a requirement for obtaining a license by endorsement.
Section 2	Amends s. 473.311, F.S., providing license renewal requirements for nonresident licensees.
Section 3	Amends s. 473.312, F.S., providing requirements for continuing education content.
Section 4	Amends s. 473.313, F.S., providing requirements for retired status licenses.
Section 5	Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Some out-of-state CPAs may need to complete less CPE in order to maintain a Florida CPA license.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The board will need to update rules regarding CPE and generate rules for retired status licenses. There is sufficient rulemaking authority to do so.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public accountancy; amending s. 473.308, F.S.; requiring certain applicants to not be licensed in any state or territory in order to be licensed by endorsement; amending s. 473.311, F.S.; providing license renewal requirements for nonresident licensees; amending s. 473.312, F.S.; requiring that a majority of the hours required for continuing education include specific content; amending s. 473.313, F.S.; authorizing certain Florida certified public accountants to apply to the Department of Business and Professional Regulation to have their license placed in a retired status; providing requirements for such conversion; providing requirements and prohibitions for retired licensees; authorizing retired licensees to use a specified title under certain circumstances; providing that retired licensees are not required to maintain continuing education requirements; authorizing retired licensees to reactivate their licenses if certain conditions are met; defining the term "retired licensee"; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) of section 473.308, Florida Statutes, is amended to read:

473.308 Licensure.—

(7) The board shall certify as qualified for a license by endorsement an applicant who:

(a) Is not licensed and has not been licensed in any ~~another~~ state or territory and who has met the requirements of this section for education, work experience, and good moral character and has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306; or

(b)1. Holds a valid license to practice public accounting issued by another state or territory of the United States, if the criteria for issuance of such license were substantially equivalent to the licensure criteria that existed in this state at the time the license was issued;

2. Holds a valid license to practice public accounting issued by another state or territory of the United States but the criteria for issuance of such license did not meet the requirements of subparagraph 1.; has met the requirements of this section for education, work experience, and good moral character; and has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306; or

3. Holds a valid license to practice public accounting

issued by another state or territory of the United States for at least 10 years before the date of application; has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306; and has met the requirements of this section for good moral character.

Section 2. Subsection (1) of section 473.311, Florida Statutes, is amended to read:

473.311 Renewal of license.—

(1)(a) The department shall renew a license issued under s. 473.308 upon receipt of the renewal application and fee and upon certification by the board that the Florida certified public accountant has satisfactorily completed the continuing education requirements of s. 473.312.

(b) A nonresident licensee seeking renewal of a license in this state is determined to have met the continuing education requirements in s. 473.312, except for the requirements in s. 473.312(1)(c), if the licensee has complied with the continuing education requirements applicable in the state in which his or her office is located. If the state in which the nonresident licensee's office is located has no continuing education requirements for license renewals, the nonresident licensee must comply with the continuing education requirements in s. 473.312.

Section 3. Paragraph (c) of subsection (1) of section 473.312, Florida Statutes, is amended to read:

473.312 Continuing education.—

(1)

(c) Not less than 5 percent of the total hours required by the board shall be in ethics applicable to the practice of public accounting. This requirement shall be administered by providers approved by the board and a majority of the hours shall include a review of the provisions of chapter 455 and this chapter and the related administrative rules.

Section 4. Section 473.313, Florida Statutes, is amended to read:

473.313 Inactive status and retired status.—

(1) A Florida certified public accountant may request that her or his license be placed in an inactive status by making application to the department. The board may prescribe by rule fees for placing a license on inactive status, renewal of inactive status, and reactivation of an inactive license.

(a) ~~(2)~~ A license that has become inactive under this subsection ~~(1)~~ or for failure to complete the requirements in s. 473.312 may be reactivated under s. 473.311 upon application to the department. The board may prescribe by rule continuing education requirements as a condition of reactivating a license. The maximum continuing education requirements for reactivating a license are 120 hours, including at least 30 hours in accounting-related and auditing-related subjects, not more than 30 hours in behavioral subjects, and a minimum of 8 hours in

ethics subjects approved by the board, for the reactivation of a license that is inactive or delinquent.

(b) ~~(3)~~ A license that is delinquent for failure to report completion of the requirements in s. 473.312 may be reactivated under s. 473.311 upon application to the department. Reactivation requires the payment of an application fee as determined by the board and certification by the Florida certified public accountant that the applicant satisfactorily completed the continuing education requirements set forth under s. 473.311. If the license is delinquent on January 1 because of failure to report completed continuing education requirements, the applicant must submit a complete application to the board by March 15 immediately after the delinquent period.

(c) ~~(4)~~ Any Florida certified public accountant holding an inactive license may be permitted to reactivate such license in a conditional manner. The conditions of reactivation shall require the payment of fees and the completion of required continuing education.

(d) ~~(5)~~ Notwithstanding the provisions of s. 455.271, the board may, at its discretion, reinstate the license of an individual whose license has become null and void if the individual has made a good faith effort to comply with this section but has failed to comply because of illness or unusual hardship. The individual shall apply to the board for reinstatement in a manner prescribed by rules of the board and

shall pay an application fee in an amount determined by rule of the board. The board shall require that the individual meet all continuing education requirements as provided in paragraph (a) ~~subsection (2)~~, pay appropriate licensing fees, and otherwise be eligible for renewal of licensure under this chapter.

(2) A Florida certified public accountant who is at least 55 years of age and currently holds an active or inactive license under this chapter may apply to the department for her or his license to be placed in retired status. The application must be prescribed by the board and must state that the applicant has no association with accounting or any of the services described in s. 473.302(8)(a), (c), or (d). If a licensee who has been granted retired status reenters the workforce in a position that has an association with accounting or any of the services described in s. 473.302(8)(a), (c), or (d), the licensee automatically loses her or his retired status except as provided in paragraph (a).

(a) A retired licensee who serves without compensation on a board of directors or board of trustees, provides volunteer tax preparation services, participates in a government-sponsored business mentoring program such as the Internal Revenue Service's Volunteer Income Tax Assistance program or the Small Business Administration's SCORE program, or participates in an advisory role for a similar charitable, civic, or other nonprofit organization shall continue to be eligible for retired

status.

(b) The board shall require a retired licensee to affirm in writing her or his understanding of the limited types of activities in which she or he may engage while in retired status and that she or he has a professional duty to ensure that she or he holds the professional competencies necessary to participate in such activities.

(c) Licensees may convert their license to retired status only if they hold a license in good standing and are not the subject of any sanction or disciplinary action.

(d) A retired licensee may accept routine reimbursement for actual costs of travel and meals associated with volunteer services or de minimis per diem amounts paid to the licensee to cover such expenses as allowed by law.

(e) A retired licensee may use the title of "retired CPA" on any business card or letterhead or any other printed or electronic document. However, such title must not be applied in such a manner that could confuse the public as to the current status of the licensee. The licensee is not required to have a certificate issued with the word "retired" on the certificate.

(f) A retired licensee is not required to maintain the continuing education requirements under s. 473.312.

(g) A retired licensee may not offer or render professional services that require her or his signature and use of the CPA title, regardless of whether the word "retired" is

attached to such title.

(h) A retired licensee may reactivate her or his license in a conditional manner determined by rule of the board. The conditions of reactivation must require the payment of fees and the completion of any required continuing education.

For the purposes of this subsection, the term "retired licensee" means a licensee whose license has been placed in retired status by the department.

Section 5. This act shall take effect July 1, 2021.

COMMERCE COMMITTEE

HB 317 by Rep. Caruso
Public Accountancy

AMENDMENT SUMMARY
April 23, 2021

Amendment 1 by Rep. Caruso (line 84): Removes the retired status license process from the bill.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Commerce Committee
Representative Caruso offered the following:

Amendment (with title amendment)
Remove lines 84-184

T I T L E A M E N D M E N T

Remove lines 9-21 and insert:
education include specific content; providing

PCS for CS/HB 305

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 305 Insurance
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

The bill makes several changes related to insurance:

- **Residential property insurance claims for roof damage –** Establishes contractors or unlicensed persons acting on their behalf may not solicit or incentivize a residential property owner to file a roof damage insurance claim. It also establishes that a public adjuster, a public adjuster apprentice, or unlicensed persons acting on their behalf may not incentivize a residential property owner to file a roof damage insurance claim.
- **Authority to examine managing general agents (MGAs) –** Clarifies that the Office of Insurance Regulation has the authority to examine MGAs, including insurers' affiliates. Examination of affiliates will not extend to passive investors who do not provide services for, or have relationships with, an insurer.
- **Collection of property insurance claims litigation data by OIR –** Establishes that each insurer or insurer group doing business in Florida shall file specific data regarding litigation of personal and commercial residential property insurance claims on with OIR an annual basis.
- **Citizens Property Insurance Corporation (Citizens) –** Makes several changes to the operations of, and requirements for, Citizens, the state-run property insurer:
    - Revises the eligibility for residential property owners to obtain coverage from Citizens so that they are not eligible for Citizens' coverage if they can obtain coverage from private insurers that is less than 20 percent greater than the premium for comparable coverage from Citizens.
    - Establishes that Citizens' may add 1 percent per year to its cap on rate increases until it reaches a maximum of a 15 percent rate cap on increases in 2026.
    - Establishes that if Citizens does not buy reinsurance to cover its projected 100-year probable maximum loss, it must still include the cost of such reinsurance in its rate calculations.
    - Establishes that Citizens must have budget allocations for employee salaries, raises for any individual employee in excess of 10 percent, and an overall employee compensation plan approved by Citizens' Board of Governors.
- **Contingency risk multiplier –** Provides threshold factors, at least one of which must be met, before a court may consider whether to apply a contingency risk multiplier in rare and exceptional circumstances to attorney fees for a suit arising under a property insurance policy.
- **Actual cash value coverage disclosure –** Establishes that when a policyholder accepts a residential property insurance policy containing actual cash value coverage, the insurer must obtain written acceptance, provide the policyholder with a disclosure regarding the coverage, and remind the policyholder of the availability of replacement cost coverage at least once every three years.
- **Notice of property insurance claims –** Changes the notice of claim deadlines in the Insurance Code so that notice of any property insurance claim must be provided to a property insurer within two years of the date of loss.
- **Presuit notice and demand –** Creates new statutory requirements for residential or commercial property suits that are not brought by an assignee, including a ten-day presuit notice and demand, before bringing suit against an insurer. The bill also provides parameters regarding the recovery of attorney fees by claimants' attorneys.

The bill has no impact on state or local government revenues or expenditures. It may have a positive direct economic impact on the private sector.

The bill has an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Residential Property Insurance Claims for Roof Damage

Background

The Florida Office of Insurance Regulation (OIR) has reported a significant increase in the number of roof damage claims, many of which include litigation.[1] These roof damage claims include claims made by residential property owners after being solicited to file an insurance claim that they may not otherwise have filed but for the promise of a new roof at no cost to the property owner.[2]

Effect of the Bill

The bill limits certain property insurance practices by contractors, public adjusters, public adjuster apprentices, and those unlicensed persons acting on their behalf.

Contractors

The bill establishes that no contractor, including a general, building, residential, or roofing contractors, or someone acting on the contractor's behalf, may:

- Solicit a residential property owner to file an insurance claim.
- Offer an incentive to a residential property owner for allowing the inspection of the residential property owner's roof or for making an insurance claim for roof damage.
- Offer or accept any compensation or reward for referral of services for which property insurance proceeds are payable.
- Interpret policy provisions, advise an insured about policy provisions, or adjust claims on behalf of an insurer unless licensed as a public adjuster.
- Provide an insured with an agreement authorizing repairs without providing a good faith estimate of the cost of repairs.

The bill establishes that a contractor may not enter into a contract with a residential property owner to repair or replace a roof without including notice in the contract that the contractor is prohibited from engaging in the above acts. If the contractor fails to include the notice in the contract, the property owner may void the contract within 10 days of its execution.

Public Adjusters

The bill establishes that a public adjuster, public adjuster apprentice, or those acting on their behalf may not:

- Offer an incentive to a residential property owner for allowing the inspection of the residential property owner's roof or for making an insurance claim for roof damage.
- Offer or receive compensation or a reward for referral of any services for which property insurance proceeds would be used for roofing repairs or replacement.

Penalties

[1] Report from David Altmaier, Florida Insurance Commissioner, to Chair Blaise Ingoglia, Commerce Committee, regarding cost drivers affecting Florida's insurance rates, p. 7 (Feb. 24, 2021).
[2] *Id.* A "free" roof replacement may be achieved by giving a residential property owner whose policy provides for replacement cost coverage for a roof a gift card or something else valued at the amount of the deductible under the policy so that the entire cost of a new roof is paid by the insurer and the individual soliciting the residential property owner.

The bill provides that any contractor, public adjuster, public adjuster apprentice, or unlicensed person acting on their behalf may be subject to a fine of up to $10,000 per violation for each of the statutory prohibitions established. Finally, the bill provides that any unlicensed person who engages in the prohibited acts shall be guilty of unlicensed contracting or public adjusting, as applicable.

OIR – Authority to Examine Managing General Agents (MGAs)

Background

MGAs

Some insurance companies operate within a holding company system that includes an MGA.[3] An MGA is a specialized type of insurance agent or broker that has underwriting authority from an insurer.[4] MGAs can perform certain functions that insurers typically handle, including binding coverage, underwriting and pricing, agent appointments, and claims adjusting and settlement.[5] An MGA may be an affiliate of an insurer. Section 624.10(1), F.S., defines an affiliate as an entity that exercises control over or is directly or indirectly controlled by an insurer. Under current law, MGAs must enter into contracts with insurers with which they do business unless the MGA is a controlled or controlling person of the insurer (i.e., an affiliate).[6] These contracts must specify the division of responsibilities between the insurer and the MGA.[7]

Examination of Insurers and MGAs

OIR is responsible for examining the affairs, transactions, accounts, records, and assets of each insurer that holds a certificate of authority to transact insurance business in Florida.[8] Examination authority extends to the examination of MGAs[9] unless the MGA solely represents a single domestic insurer.[10] With certain exceptions, OIR must examine domestic insurers[11] at least once every five years and the exam shall cover the preceding five fiscal years.[12]

As part of the examination process, all persons being examined must make available to OIR the accounts, records, documents, files, information, assets, and matters in their possession or control that relate to the subject of the examination.[13] As part of an examination, OIR reviews contracts between insurers and MGAs, so that it can determine how much an insurer is paying its MGA and what services the insurer is receiving for the fee it pays. However, the lack of contracts between insurers and their affiliate MGAs sometimes makes it difficult to determine how much the insurer is paying and what services it is receiving from the MGA.

Effect of the Bill

The bill clarifies that OIR has the same authority to examine MGAs as it has to examine insurers, whether or not an MGA is an affiliate of an insurer. This authority applies even if the MGA solely

[3] *See s. 628.801, F.S.* An "insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer. National Association of Insurance Commissioners, https://content.naic.org/sites/default/files/inline-files/MDL-440.pdf (last visited Apr. 18, 2021).
[4] IRMI, https://www.irmi.com/term/insurance-definitions/managing-general-agent (last visited Apr. 2, 2021).
[5] *Id.*
[6] S. 626.7451, F.S.
[7] *Id.*
[8] S. 624.316(1)(a), F.S.
[9] *Id.*
[10] S. 626.7452, F.S.
[11] A domestic insurer is one formed under the laws of Florida. S. 624.06(1), F.S.
[12] S. 624.316(2)(a), F.S. While s. 624.316(1)(a), F.S., clearly states that OIR may examine MGAs, because some MGAs are considered affiliates of insurers, and s. 624.316(2)(a), F.S., does not specify that OIR may examine affiliates in the same way as insurers, OIR has indicated that some MGAs have not been completely cooperative with the examination process.
[13] S. 624.318(2), F.S.

represents a single domestic insurer. The bill also requires each insurer paying an affiliate to produce information regarding the fee paid to the affiliate upon request by OIR. OIR may determine whether the fee an insurer pays to an affiliate is fair and reasonable and, in so doing, may consider the actual cost of the services being provided in exchange for the fee. The bill establishes that all MGAs must execute contracts with the insurers that they do business with, even if they are MGAs that control, or are controlled by, an insurer. Further, the bill establishes that the scope of the examination of insurer's affiliates in a holding company system will be limited to information reasonably necessary to ascertain an insurer's financial condition. OIR's examination of an insurer's affiliate will not extend to the passive investors of affiliates within the holding company system which do not provide services directly or indirectly to the insurer or do not have direct or indirect relationships with the insurer unless reasonably necessary.

Collection of Property Insurance Claims Litigation Data by OIR

Background

All insurers with a Florida certificate of authority to transact insurance business must file quarterly and annual reports with OIR containing various financial data and actuarial opinions.[14] However, the law does not currently specify that insurers must report data regarding the litigation of claims.

OIR recently conducted a data survey of property insurers to gather information regarding the litigation of personal or commercial residential property insurance claims.[15] In response to this survey, several insurers indicated that they could not provide OIR with answers to questions related to litigation trends because they did not collect the requested data as part of their claims evaluation and adjusting process.[16]

Effect of the Bill

The bill establishes that beginning on January 1, 2022, each insurer or insurer group doing business in Florida must provide specific pieces of data regarding litigation of personal and commercial residential property insurance claims to OIR on an annual basis. This data includes, but is not limited to, the following information on a per claim basis:

- Type of policy;
- Date, location, and type of loss;
- Name and type of vendors utilized for mitigation, repair, or replacement;
- Dates on which the claim was reported to the insurer, closed by the insurer, and reopened by the insurer;
- Dates on which a supplemental claim was made;
- Whether the claimant had a public adjuster or an attorney;
- Total amounts that the insurer paid for indemnity, loss adjustment expenses,[17] and insured's attorney fees;
- Whether the insured's attorney requested that a contingency risk multiplier (CRM)[18] be applied to the attorney fees calculation and, if so, what CRM was applied.

If insurers collect and report this data, OIR and the Legislature should be able to more effectively identify current and emerging property insurance litigation trends that may be affecting insurance rates.[19]

Citizens Property Insurance Corporation (Citizens)

[14] S. 624.424, F.S.
[15] Altmaier, *supra*, note 1, at 12.
[16] *Id.*
[17] Loss adjustment expenses are the costs associated with investigating and adjusting losses or insurance claims. IRMI, https://www.irmi.com/term/insurance-definitions/loss-adjustment-expense (last visited Apr. 2, 2021).
[18] A CRM is a multiplier applied to attorney fees that reflects the risk of attorneys accepting, on a contingency fee basis, cases that may be difficult to win. *See e.g., Joyce v. Federated Nat'l Ins. Co.*, 228 So. 3d 1122 (Fla. 2017).
[19] Altmaier, *supra*, note 1, at 12.

Citizens is a state-created, not-for-profit, tax-exempt government entity that is an integral part of the state, whose public purpose is to provide property insurance to those unable to find affordable coverage in the private market.[20]

Eligibility and Rates

Background

New applicants are eligible for coverage from Citizens if no private carrier will write them a policy for a premium that is less than 15 percent greater than what Citizens would offer them for comparable coverage.[21] The rate cap, also known as the "glide path," is not closing the gap between Citizens rates and private market rates. Instead, because of the rate cap and the increasing rates of private property insurance, the gap is growing and making Citizens more like a competitor to private insurers than an insurer of last resort. Annual rate increases for existing Citizens' policyholders are capped at no more than 10 percent for any single policy.[22] It is unclear if, or how, the law allows OIR to approve a rate reduction for Citizens.

Because Citizens' rates are often well below those of private carriers, Citizens may be more competitive than otherwise intended. Due to Citizens' structure, its rates do not contain certain elements that the rates of private insurers contain. Citizens does not pay taxes like private carriers do and does not need to purchase as much reinsurance as private carriers do due to higher levels of capital and surplus.

Current law also requires that Citizens make its best efforts to procure catastrophe reinsurance at reasonable rates to cover its projected 100-year probable maximum loss.[23] Due to the high cost of reinsurance over the recent years, Citizens has determined that it is not available at reasonable rates and has not purchased it. This lack of purchase has contributed to its rates remaining more competitive and more consumers being eligible for coverage from Citizens.

Effect of the Bill

The bill establishes that residential property owners are not eligible for coverage from Citizens if they can obtain coverage from private insurers that is less than 20 percent greater than the premium for comparable coverage from Citizens.

The bill also establishes that on or after January 1, 2022, Citizens must implement rate increases that do not exceed the following percentages for any single policy that it issues:

- Eleven percent for 2022;
- Twelve percent for 2023;
- Thirteen percent for 2024;
- Fourteen percent for 2025;
- Fifteen percent for 2026 and all subsequent years.

The bill also clarifies that Citizens need not purchase catastrophe reinsurance to cover its projected 100-year probable maximum loss if it is not available at reasonable rates. However, Citizens must include the cost of this reinsurance in its rate calculations even if it does not purchase the reinsurance.

[20] S. 627.351(6)(a)1., F.S.
[21] S. 627.351(6)(c)5.a., F.S.
[22] S. 627.351(6)(n)6., F.S.
[23] S. 627.351(6)(c)9., F.S. "Probable maximum loss" refers to the value that may be reasonably expected to be lost in a single casualty. IRMI, https://www.irmi.com/term/insurance-definitions/probable-maximum-loss (last visited Apr. 2, 2021). If an insurer is buying reinsurance to cover its 100-year probable maximum loss, it is purchasing reinsurance to cover the maximum loss that has a chance of occurring once in 100 years.

Salaries of Citizens' Personnel

Background

Citizens operates pursuant to a plan of operation (plan) that is approved by the Financial Services Commission (FSC).[24] Pursuant to the applicable statute, the plan may contain certain criteria regarding Citizens' employees.[25] Additionally, the applicable statute specifies that candidates for senior management positions with Citizens must undergo background checks, that employees must attest annually that they do not have any conflicts of interests with their employment, and that certain employees of Citizens are subject to ethics disclosures.[26] However, neither the statute nor the plan provide any parameters for the salaries that Citizens may pay its employees.

Effect of the Bill

The bill provides that Citizens' Board of Governors must approve all of the following:

- Budget allocations for the compensation of all Citizens' employees.
- Any proposed raise for an individual employee exceeding 10 percent of that employee's current salary.
- An overall employee compensation plan.

Attorney Fees Awarded in Property Insurance Litigation

Background

In certain situations, a court may require one party to pay the opposing party's attorney fees. The traditional English Rule entitled a prevailing party to attorney fees as a matter of right. Florida, however, with a majority of other U.S. jurisdictions, adopted the American Rule, under which each party is responsible for its own attorney fees unless a statute provides an entitlement to fees.

A contingency fee is an attorney fee that is charged only if the lawsuit is successful or favorably settled out of court.[27] An attorney and a client may enter into a contingency fee contract, agreeing that the client will pay the attorney a fee only if the attorney successfully recovers for the client.

The Florida Supreme Court, through its Rules Regulating the Florida Bar, allows contingency fee contracts but restricts their use.[28] Rule 4-1.5(f) prohibits contingency fees in criminal defense and certain family law proceedings.[29] The rule also requires a contingency fee agreement to:

- Be in writing;
- State the method by which the fee is to be determined;
- State whether expenses are to be deducted before or after the contingency fee is calculated; and
- In certain types of cases, include other provisions ensuring the client is aware of the agreement's terms.[30]

Upon conclusion of a contingency fee case, the attorney must provide the client with a written statement stating the outcome of the case, the amount remitted to the client, and how the attorney calculated the amount.[31]

Statutorily Provided Attorney Fees

[24] S 627.351(6)(a)2., F.S. The FSC is composed of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. S. 20.121(3), F.S.
[25] S. 627.351(6)(c)3., F.S.
[26] S. 627.351(6)(d), F.S.
[27] *See* Black's Law Dictionary 338 (8th ed. 2004).
[28] R. Regulating Fla. Bar 4-1.5(f).
[29] R. Regulating Fla. Bar 4-1.5(f)(3).
[30] R. Regulating Fla. Bar 4-1.5(f)(1) and (4).
[31] R. Regulating Fla. Bar 4-1.5(f)(1).

Several state and federal statutes known as “fee-shifting statutes” state that a prevailing party in court proceedings is entitled to reasonable attorney fees as a matter of right.[32] When a fee-shifting statute applies, the court must determine and calculate what constitutes reasonable attorney fees.

Lodestar Approach

In *Fla. Patient’s Comp. Fund v. Rowe,* a 1985 case, the Florida Supreme Court held that courts should calculate the amount of statutorily-authorized attorney fees using the "lodestar approach."[33] Applying this approach requires the court to determine the number of hours reasonably expended on the case and to determine a reasonable hourly rate for the attorney to have charged. Then the number of hours reasonably expended, multiplied by the reasonable hourly rate, produces the "lodestar amount," which is considered an objective basis for what the attorney fee amount should be.

Contingency Risk Multiplier

In certain cases, the court increases the attorney fees awarded by applying a contingency risk multiplier (CRM) to the lodestar amount.[34] The concept of the CRM arose from judicial interpretations of statutory authorization of attorney fees in particular cases,[35] but the Legislature also expressly provides for the use of a CRM in certain cases.[36] In 1990, the Florida Supreme Court discussed three different types of cases and whether a CRM should be applied in each case, as follows:

- *Public policy enforcement cases.* These cases may involve discrimination, environmental issues, and consumer protection issues. In these cases, a CRM is usually inappropriate.
- *Family law, eminent domain, estate, and trust cases*. In these cases, a CRM is usually inappropriate.
- *Tort and contract claims, including insurance cases*. In these cases, a CRM may be applied if the plaintiff can demonstrate the following factors show a need for the multiplier:
    - Whether the relevant market requires a CRM to obtain counsel;
    - Whether the attorney can mitigate the risk of nonpayment; and
    - Whether any other factors established in *Rowe*[37] support the use of the multiplier.[38]

Further, in the same decision, the Court noted that the size of the CRM varies from 1.0 to 2.5 based on the likelihood of success at the outset of the case, as follows:

- 1.0 to 1.5, if the trial court determines that success was more likely than not at the outset;

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[32] *See, e.g.,* s. 627.428, F.S., which is often referred to as the “one-way attorney fees statute” (providing that an insured who prevails against an insurer is entitled to "a reasonable sum" of attorney fees); s. 501.2105, F.S. (providing that the prevailing party in an action under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA) is entitled to "a reasonable legal fee"); 42 U.S.C. s. 1988(b) (providing that a prevailing party seeking to enforce specified civil rights statutes may recover "a reasonable attorney's fee").

[33] *Fla. Patient's Comp. Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985).

[34] The Court may also adjust the amount based on the results obtained by the attorney. *Standard Guar. Ins. Co. v. Quanstrom*, 555 So. 2d 828, 830-31 (Fla. 1990). CRMs are also referred to as contingency fee multipliers.

[35] The rationale for using a CRM to increase an attorney fee award is that plaintiffs and plaintiffs' attorneys generally do not recover any money unless they prevail. The attorney fee multiplier induces attorneys to take a risk on cases they might not otherwise take, allowing would-be plaintiffs to find attorneys willing to represent them.

[36] *See* s. 790.33(3)(f)1, F.S. (explicitly authorizing a contingency fee multiplier in certain cases relating to the preemption of firearm and ammunition regulation).

[37] The *Rowe* factors were based upon Disciplinary Rule 2-106(b) of the Florida Bar (which is now Rule of Professional Conduct 4-1.5), and were as follows:

- Time and labor required, novelty and difficulty of the question involved, and the skill and requisite to perform the legal service properly.
- Likelihood, if apparent to the client, that the acceptance of employment would preclude other employment by the lawyer.
- Fee customarily charged in the locality for similar legal services.
- Amount involved and results obtained.
- Time limitations imposed by the client and circumstances.
- Nature and length of the professional relationship with the client.
- Experience, reputation, and ability of the lawyer(s) providing services.
- Whether the fee is a fixed or contingency fee.

Rowe, 472 So. 2d at 1150–1151.

[38] *Quanstrom*, 555 So. 2d at 833-35.

- 1.5 to 2.0, if the trial court determines that the likelihood of success was approximately even at the outset;
- 2.0 to 2.5, if the trial court determines that success was unlikely at the outset.[39]

Therefore, under current law, an attorney is more likely to receive a higher CRM—and thus a higher attorney risk award—if he or she takes a case that at the outset seems unlikely to succeed.

Federal Court Treatment of the Contingency Risk Multiplier

Part of the Florida Supreme Court's rationale for adopting the CRM framework in 1985 was the application of CRMs in federal courts.[40] However, in *Burlington v. Dague,* the U.S. Supreme Court decided and rejected the use of a CRM under certain federal risk-shifting statutes. In that case the Supreme Court signaled that it was closing the door on the CRM's use in most, if not all, federal cases.[41]

In *Perdue v. Kenny A. ex. rel. Winn,* a 2010 case involving a class action lawsuit filed on behalf of 3,000 children in the Georgia foster care system, the U.S. Supreme Court again addressed the CRM issue.[42] The plaintiffs argued in the underlying case that the foster care system in two counties was constitutionally deficient. The case was mediated and the parties entered a consent decree resolving all issues. Subsequently, the plaintiffs' attorneys sought attorney fees under 42 U.S.C. s. 1988.[43]

The federal district court calculated the fees using the lodestar approach, arriving at a $6 million figure, and then applied a 1.75 CRM, for a total attorney fee of $10.5 million. The district court justified the CRM by finding that the attorneys had:

- Advanced $1.7 million with no ongoing reimbursement.
- Worked on a contingency basis, and therefore were not guaranteed payment.
- Displayed a high degree of skill, commitment, dedication, and professionalism.
- Achieved extraordinary results.[44]

On review, the U.S. Supreme Court reversed the district court's calculation of attorney fees, remanding the case because the district court did not provide adequate justification for the 75 percent increase. The Court reiterated that "there is a strong presumption that the lodestar figure is reasonable," but that such presumption "may be overcome in those *rare circumstances* in which the lodestar does not adequately take into account a factor that may properly be considered in determining a reasonable fee."[45] The Court also determined that a CRM may be applicable in “exceptional” circumstances.[46]

The Court determined that the application of CRMs may sometimes be appropriate, while also issuing several warnings about CRMs, as follows:

- When a trial court fails to give detailed explanations for why it applies a CRM, "widely disparate awards may be made, and awards may be influenced . . . by a judge's subjective opinion regarding particular attorneys or the importance of the case."[47]
- "[U]njustified enhancements that serve only to enrich attorneys are not consistent" with the aims of a statute that seek to compensate plaintiffs.[48]
- In many cases, attorney fees "are not paid by the individuals responsible for the constitutional or statutory violations on which the judgment is based . . . . Instead, the fees are paid . . . by state and local taxpayers," resulting in a diversion of funds from other government programs.[49]

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[39] *Id.* at 834.
[40] *See Rowe*, 472 So. 2d at 1146 ("[W]e . . . adopt the federal lodestar approach for computing reasonable attorney fees").
[41] *See City of Burlington v. Dague*, 112 S. Ct. 2638 (1992) ("Thus, enhancement for the contingency risk posed by each case would encourage meritorious claims to be brought, but only at the social cost of indiscriminately encouraging nonmeritorious claims to be brought as well . . . [W]e hold that enhancement for contingency is not permitted under the fee-shifting statutes at issue").
[42] *Perdue v. Kenny A. ex rel. Winn*, 130 S. Ct. 1662 (2010).
[43] 42 U.S.C. s. 1988(b) allows the court to award attorney fees to the prevailing party in certain civil rights actions.
[44] *Perdue*, 130 S. Ct. at 1670.
[45] *Id.* at 1673 (emphasis added).
[46] *Id.*
[47] *See id.* at 1676.
[48] *See id.*

Recent Florida Supreme Court Treatment of the Contingency Risk Multiplier

In 2017, in the case of *Joyce v. Federated Nat'l Ins. Co.,* the Florida Supreme Court rejected the U.S. Supreme Court's *Dague* decision, instead holding that the CRM in Florida courts is not subject to the "rare and exceptional circumstances" requirement.[50] The Court acknowledged that, based upon its decision to maintain the applicability of the CRM without the restrictions implemented by the *Dague* decision, Florida "separat[ed] from federal precedent in this area."[51]

In *Joyce*, an elderly couple who sustained water damage to their home, filed a claim with their insurer, who subsequently denied coverage on the basis of alleged material misrepresentations on the part of the Joyces during their application for insurance.[52] The Joyces hired an attorney on a contingency fee basis and sued their insurer, but eventually settled the case.[53] The parties agreed that the Joyces were entitled to attorney fees and a fee hearing occurred in which the trial court applied a 2.0 CRM to the lodestar attorney fee amount previously calculated.[54] The insurer appealed the case to the district court of appeal, which affirmed the lodestar amount, but reversed the application of the CRM.[55] The Joyces then appealed to the Florida Supreme Court, which accepted review and ruled in the Joyces' favor.[56] In his dissent to the *Joyce* opinion, however, Justice Canady stated that the case "illustrates the arbitrary results that can flow from application of the contingency risk multiplier….[which] have previously been exposed."[57]

Attorney Fees Applicable to Property Insurance Litigation ("One-way Attorney Fees")

Current Florida law provides that when a court issues a judgment against an insurer, and in favor of an insured who is represented by an attorney, the court shall order that the insurer pay a reasonable amount of attorney fees to an insured's attorney.[58] This provision regarding attorney fees is applicable to various insurance claim disputes, including property insurance claim disputes.[59]

Effect of the Bill

Contingency Risk Multiplier

For property insurance litigation, the bill establishes that, upon a request by the insurer, a court may consider applying a contingency risk multiplier only in rare and exceptional circumstances after making a written finding that at least one of the following factors has been met:

- The type of property insurance claim in dispute is complex in nature and uncommon in occurrence.
- The insurer has denied coverage for the claim.
- The insured cannot find competent counsel without a reasonable distance from the location of the property that is the subject of the claim. Reasonable distance includes, at a minimum, the counties contiguous to the county where that property is located.

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[49] *See id.* at 1677.
[50] *See Joyce v. Federated Nat'l Ins. Co.*, 228 So. 3d 1122 (Fla. 2017) ("[W]ith all due deference to the United States Supreme Court, we do not accept the *Dague* majority's rationale for rejecting contingency fee multipliers").
[51] *Id. at* 1132.
[52] *Id.* at 1123.
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Id.* at 1132.
[58] S. 627.428, F.S.
[59] Of note, the Florida legislature has expressly prohibited the use of contingency risk multipliers for personal injury protection cases. *See* s. 627.736(8)(c), F.S.

- The difference between the insurer's initial offer and the insured's initial demand for damages to settle the loss was at least $5,000 or at least 15 percent of the difference, whichever is greater, and the insured recovered more than the initial offer.
- The amount of damages that the insured recovered for the claim exceed the insurer's initial offer by at least 200 percent.

One-way Attorney Fees

The bill also modifies current one-way attorney fee statute for property insurance litigation as follows:

- If the difference between the judgment obtained by the claimant and the presuit settlement offer by the insurer, excluding reasonable attorney fees and costs, is less than 20 percent of the disputed amount, each party pays their own attorney fees and costs.
- If the difference between the judgment obtained by the claimant and the presuit settlement offer by the insurer, excluding reasonable attorney fees and costs, is at least 20 percent but under 50 percent of the disputed amount, the insurer pays the claimant's attorney fees and costs equal to the percentage of the disputed amount obtained times the total attorney fees and costs.
- If the difference between the judgment obtained by the claimant and the presuit settlement offer by the insurer, excluding reasonable attorney fees and costs, is at least 50 percent of the disputed amount, the insurer pays the claimant's full attorney fees and costs.

The bill defines the disputed amount as the difference between the claimant's presuit settlement demand, not including attorney fees and costs and the insurer's presuit settlement offer, not including attorney fees and costs.

Informed Acceptance of Actual Cash Value Coverage (ACV)

Background

Property insurance claims are adjusted on the basis of replacement cost or actual cash value (ACV), depending on which type of coverage a policyholder purchased. When claims are adjusted on a replacement cost basis, the insurer will pay for the entire cost of repair or replacement without a reduction for depreciation.[60] However, when claims are adjusted on an ACV basis, the insurer pays the policyholder the depreciated value of the property damage or loss that is being replaced or repaired.[61] Property insurers must offer policyholders the option to purchase replacement cost coverage for all portions of their property.[62] Concerns have arisen that policyholders who choose to purchase property insurance policies that contain ACV coverage have not been adequately informed about what they are giving up by not purchasing replacement cost coverage.

Effect of the Bill

The bill requires that an insurer issuing a homeowner's policy or schedule providing actual cash value coverage must:

- Provide a policyholder with a form that the policyholder must sign at initial policy or schedule issuance, and must fully advise the policyholder of the nature of the coverage being accepted.
- Include with the policy or schedule at initial issuance and every renewal, a statement indicating that ACV coverage may result in significant costs to the policyholder.

[60] For example, if a roof is destroyed beyond repair, and a policyholder has replacement cost coverage, the insurer will pay to replace the entire roof, minute the deductible, regardless of the age or condition of the roof at the time of the loss.
[61] If a roof damage claim is adjusted on the basis of ACV rather than replacement cost, this would mean that the cost of replacing an entire roof when the roof has been damaged beyond repair may not be covered. There is a concern that policies that contain ACV coverage for roofs will not comply with the requirements of Fannie Mae and Freddie Mac, which require insurance to be placed at 100 percent replacement cost of the dwelling for homes that are in catastrophe areas. *See Multifamily Selling and Servicing Guide*, (effective Feb. 4, 2019), at 272-273, https://multifamily.fanniemae.com/sites/g/files/koqyhd161/files/migrated-files/content/guide/multifamily-selling-servicing-guide.pdf (last visited Mar. 13, 2021).
[62] S. 627.7011, F.S.

- At least once every 3 years, provide a policyholder with a reminder that replacement cost coverage is available.

Notice of Property Insurance Claims

Background

Until 2011, the Florida Insurance Code (Code)[63] did not contain a time limit for giving notice of any type of property insurance claim. Section 95.11, F.S., requires that actions on contracts be brought within five years. Because an insurance policy is a contract, the five-year statute of limitations for contract actions generally applied to claims under insurance policies. Since a claim must have been made before a policyholder could sue for breach of contract, and a policyholder had five years to sue for breach of contract, the claim must have been made within five years of the date of loss.

Section 627.70132, F.S., enacted in 2011, established that notice of any hurricane or windstorm claim, supplemental claim, or reopened claim[64] under a property insurance policy must be provided to an insurer within three years after the hurricane made landfall or the windstorm caused the covered damage. Any claim for which notice is not given within the three-year timeframe is barred.[65] The three-year time limit for providing notice of a hurricane or windstorm claim does not affect the five-year statute of limitations for bringing suit under s. 95.11, F.S.[66] This means that while notice of a windstorm or hurricane claim must be provided to an insurer within three years of the date of loss, suit may still be brought for an additional two years past the notice deadline.[67] The time limit for notice of all other property insurance claims besides hurricane and windstorm claims has remained equal to the five-year statute of limitations because statutes do not specify otherwise.

Effect of the Bill

The bill changes the notice of claim deadlines in the Code so that notice of any property insurance claim, including a claim made under a property insurance policy issued by an eligible surplus lines insurer, must be provided to a property insurer within two years of the date of loss.

The bill redefines reopened and supplemental claims so that these terms have separate meanings. A reopened claim is defined as a claim that an insurer has previously closed, but that has been reopened upon an insured's request for additional costs for loss or damage previously disclosed to the insurer. A supplemental claim is defined as a claim for additional loss or damage from the same peril which the insurer has previously adjusted that was discovered while completing repairs or replacement pursuant to an open claim. The bill establishes that reopened claims are subject to the requirement that a policyholder give notice of loss within two years after the date of loss, but supplemental claims are not barred as long as notice is given to the insurer while the claim to which they are related remains open.

The bill establishes that, for the purposes of s. 627.70132, F.S., a claim that an insurer has closed without providing an insured with the total amount due for the loss or damage is not considered a closed claim. It also makes technical changes to the statute regarding alternative dispute resolution of property insurance claims so that the changes to the notice of claim statute do not conflict with that statute.[68]

Presuit Notice and Demand Requirements for Property Insurance Claims

Background

[63] The Florida Insurance Code is comprised of chapters 624-632, 634-636, 641, 642, 648, and 651, F.S.
[64] S. 627.70132, F.S., defines both "supplemental claim" and "reopened claim" as "any additional claim for recovery from the insurer for losses from the same hurricane or windstorm which the insurer has previously adjusted pursuant to the initial claim." Because these terms have the same definition, it is unclear why the statute uses both of them.
[65] S. 627.70132, F.S.
[66] *Id.*
[67] Often, the type of suit that an insured brings against an insurer is a breach of contract suit based upon a denial of a claim.
[68] S. 627.7015, F.S.

Under existing law, within 90 days after a residential property insurer receives a notice of an initial, reopened, or supplemental property insurance claim from a policyholder, the insurer must pay or deny the claim or a portion of the claim, unless the failure to pay is due to circumstances beyond the insurer's control which reasonably prevent payment.[69] In some circumstances, a claimant will hire an attorney and file suit against an insurer before the expiration of the allotted time for the insurer to pay or deny a claim. In contrast, as a condition precedent to bringing a third-party cause of action to enforce an assignment agreement against an insurer, the assignee must provide the name insured and the assignor a written notice of intent to initiate litigation, delivered at least ten business days before filing suit, but not before the insurer has made a determination of coverage.[70]

Effect of the Bill

The bill creates a new statutory section which applies to all residential and commercial property suits not brought by an assignee. Under that section, a claimant must:

- Cooperate with the insurer in the claim investigation.
- Provide the insurer with requested records and documents related to any services that have been provided.
- Provide the insurer with estimates of the scope of work needing to be performed.
- Allow the insurer to inspect, photograph, or evaluate the property that is the subject of the claim.

As a condition precedent to filing suit under a property insurance policy, a claimant must provide the Department of Financial Services (DFS) with a written notice of intent to initiate litigation on a form provided by DFS at least 10 business days prior to filing suit, but not before the earlier of the expiration of the 90-day period for the insurer to determine coverage or denial of coverage by the insurer.[71] DFS will provide the insurer with the notice by delivering it to a designated email on file with DFS.

The notice of intent to initiate litigation must include insurer's acts or omissions that give rise to the suit, which may include a denial of coverage. If the notice is being provided to an insurer following a denial of coverage, the notice must also include an estimate of damages, if known. If the notice is being provided to an insurer following any other act or omission by the insurer, it must include both of the following:

- A presuit settlement demand that must itemize damages, attorney fees, and costs.
- The disputed amount, which is defined as the difference between the claimant's presuit settlement demand, not including attorney fees and costs, and the insurer's presuit settlement offer, not including attorney fees and costs.

Pursuant to the bill, an insurer served with a presuit notice must respond to the notice in writing within ten business days after receiving the notice. If an insurer is responding to a notice served on it following a denial of coverage, the insurer must respond by: (1) accepting coverage; (2) denying coverage; or (3) asserting the right to reinspect the damaged property. If an insurer responds by asserting the right to reinspect the damaged property, it has 14 business days from the response asserting that right, to reinspect the property and accept or continue to deny coverage. If the insurer continues to deny coverage, the claimant may file suit without providing additional notice to the insurer.

If an insurer is responding to a notice served on it following any act or omission other than a coverage denial, the insurer must respond by making a settlement offer or by requiring the claimant to participate in appraisal or another form of alternative dispute resolution as provided for under the insurance policy. The time limits for filing a suit under s. 95.11, F.S., are tolled during the ten-day period for the insurer to respond to the presuit notice and while appraisal or alternative dispute resolution is ongoing. However, if appraisal or alternative dispute resolution have not been concluded within 90 days after the expiration of the ten-day notice of intent to initiate litigation, the claimant or claimant's attorney may immediately file suit without providing the insurer additional notice.

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[69] S. 627.70131, F.S. This statute is sometimes referred to as the "prompt pay" statute for property insurance claims.
[70] An assignee is someone who receives policy rights through an assignment by a policyholder (assignor). IRMI, https://www.irmi.com/term/insurance-definitions/assignee (last visited April 2, 2021). *See* s. 627.7152, F.S., for presuit requirements placed on assignees.
[71] S. 627.70131, F.S.

The bill also requires that a court dismiss without prejudice any claimant's suit relating to a claim for which presuit notice is given if the suit is commenced before the expiration of the ten-day period for the insurer to respond. If a court dismissed a claimant's suit under these circumstances, the claimant's attorney is not entitled to an award of attorney fees for services rendered before the suit's dismissal.

Finally, the bill:

- Establishes that presuit notice is admissible as evidence in a civil suit or an alternative dispute resolution proceeding relating to the claim in which the notice is given;
- Provides that the presuit notice does not limit the evidence of attorney fees or costs, damages, or loss, which may be offered at trial; and
- Provides that the presuit notice does not relieve the insured or an assignee of the burden of providing any other notices required by law.

B. SECTION DIRECTORY:

Section 1. Creates s. 489.147, F.S., relating to prohibited property insurance practices.

Section 2. Amends s. 624.316, F.S., relating to examination of insurers.

Section 3. Amends s. 624.318, F.S., relating to conduct of examination or investigation; access to records; correction of accounts; appraisals.

Section 4. Amends s. 624.424, F.S., relating to annual statement and other information.

Section 5. Amends s. 626.7451, F.S., relating to managing general agents; required contract provisions.

Section 6. Amends s. 626.7452, F.S., relating to managing general agents; examination authority.

Section 7. Amends s. 626.854, F.S., relating to "public adjuster" defined; prohibitions.

Section 8. Amends s. 627.351, F.S., relating to insurance risk reapportionment plans.

Section 9. Amends s. 627.3518, F.S., relating to Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.

Section 10. Amends s. 627.428, F.S., relating to attorney fees.

Section 11. Amends s. 627.7011, relating to homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.

Section 12. Amends s. 627.70132, F.S., relating to notice of windstorm or hurricane claim.

Section 13. Amends s. 627.7015, F.S., relating to alternative procedure for resolution of disputed property insurance claims.

Section 14. Creates s. 627.70152, F.S., relating to suits arising under a property insurance policy.

Section 15. Amends s. 628.801, F.S., relating to insurance holding companies; registration; regulation.

Section 16. Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent the bill reduces property insurance rates and claims litigation, the bill may have a positive indeterminate impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires no additional rulemaking authority for OIR or DFS. While the bill requires the adoption of a form prescribed by the FSC on which insurers will report their property insurance claims litigation data, the Florida Insurance Code contains existing authority for the promulgation of such forms by the FSC. The bill also requires DFS to adopt a form for presuit notice. However, DFS has existing authority for the promulgation of such forms, as well.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 23, 2021, the Insurance & Banking Subcommittee considered a proposed committee substitute (PCS) along with one amendment to the committee substitute and reported the bill favorably as a committee substitute. The PCS:

- Removed the contingency risk multiplier provision.

- Removed the portion that clarified that that insurers are authorized to provide limited roof coverage in personal lines residential property insurance policies by including a roof surface reimbursement schedule.
- Clarified that OIR has the same authority to examine MGAs that it has to examine insurers.
- Established that each insurer or insurer group doing business in Florida must provide specific pieces of data regarding litigation of personal and residential property insurance claims to OIR on a quarterly basis.
- Modified certain rating and eligibility requirements for Citizens.
- Placed salary limits on Citizens' employees.
- Added presuit notice requirements for all residential and commercial property suits not brought by an assignee.

The amendment to the PCS made the following changes:

- Established that no contractor, including a general, building, residential, or roofing contractor, or someone acting on the contractor's behalf may:
    - Solicit a residential property owner to file an insurance claim.
    - Offer an incentive to a residential homeowner for allowing the inspection of the residential property owner's roof or for making an insurance claim for roof damage.
    - Offer or accept any compensation or reward for referral of services for which property insurance proceeds are payable.
    - Interpret policy provisions, advise an insured about policy provisions, or adjust claims on behalf of an insured unless licensed as a public adjuster.
    - Provide an insured with an agreement authorizing repairs without providing a good faith estimate of the cost of the repairs.
- Established that a contractor may not enter into a contract with a residential property owner to repair or replace a roof without including notice that the contractor is prohibited from engaging in certain acts.
- Established that a public adjuster, public adjuster apprentice, or those acting on their behalf may not:
    - Offer an incentive to a residential homeowner for allowing the inspection of the residential property owner's roof or for making an insurance claim for roof damage.
    - Offer or receive any compensation or reward for referral of any services for which property insurance proceeds would be used for roofing repairs or replacement.
- Provided that any contractor, public adjuster, public adjuster apprentice, or person acting on their behalf may be subject to a fine of $10,000 per violation for each of the statutory prohibitions.
- Provided that any unlicensed person who engages in the prohibited acts shall be guilty of unlicensed contracting or public adjusting, as applicable, and is subject to a fine of $10,000 per violation for each of the statutory prohibitions.

A bill to be entitled

An act relating to insurance; creating s. 489.147, F.S.; providing definitions; prohibiting certain practices by contractors; providing for disciplinary proceedings; providing that the acts of any persons on behalf of a contractor are considered the acts of a contractor; providing that certain acts constitute unlicensed contracting; providing penalties; prohibiting a contractor from executing a contract with a residential property owner for a roofing repair or replacement unless certain notice is included; authorizing the residential property owner to void the contract within a specified timeframe when such notice is not included; amending s. 624.316, F.S.; authorizing the Office of Insurance Regulation to examine insurer affiliates; amending s. 624.318, F.S.; requiring insurer affiliates to provide certain items and information to the office during examination or investigation; amending s. 624.424, F.S.; requiring property insurers, effective a certain date, to include certain data regarding closed claims in their annual reports to the office; requiring the office to consider certain costs in determining whether payments made by an insurer to an affiliate are fair and reasonable; amending s. 626.7451, F.S; requiring

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managing general agents to enter into specified contracts with insurers even when the managing general agents control, or are controlled by, the insurers; amending s. 626.7452, F.S.; providing that a managing general agent may be examined as if it were the insurer even if the managing general agent solely represents a single domestic insurer; amending s. 626.854, F.S.; prohibiting certain acts by a public adjuster, public adjuster apprentice, and certain other persons; providing that certain acts constitute unlicensed practice of public adjusting; providing penalties; amending s. 627.351, F.S.; revising a procedure that the plan of operation of Citizens Property Insurance Corporation must provide; requiring the corporation to include the costs of catastrophe reinsurance to its projected 100-year probable maximum loss in its rate calculations even if the corporation does not purchase such reinsurance; deleting obsolete language relating to the corporation's rate filings; requiring the corporation to annually implement a rate increase that does not exceed a certain percent for specified years; requiring the corporation's budget allocations for salaries for the corporation's employees, all employee raises exceeding 10 percent, and an employee compensation plan for the corporation

to be approved by the corporation's board of governors; amending s. 627.3518, F.S.; conforming a cross-reference; amending s. 627.428,F.S.; providing that, for an award of attorney fees for a claim under a property insurance policy, the application of a contingency risk multiplier may be considered only if certain factors have been met; providing such factors; amending s. 627.7011, F.S.; requiring written acceptance of actual cash value coverage in a homeowner's policy; requiring a specific statement in a certain homeowner's policy; requiring notice of availability of certain coverage in a homeowner's policy; amending s. 627.70132, F.S.; revising the definitions of the terms "supplemental claim" and "reopened claim" to include all perils; providing that claims and reopened claims under certain property insurance policies for loss or damage caused by perils are barred unless notice is given within a specified timeframe; revising the timeframe for notice for loss or damage caused by windstorm or hurricane; providing date of loss for weather-related events; providing circumstances under which supplemental claims are not barred; providing construction; amending s. 627.7015, F.S.; conforming a provision to changes made by the act; creating s. 627.70152, F.S.; providing

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applicability; providing definitions; providing duties of a claimant; requiring written notice to be provided to an insurer before a suit is filed under an insurance policy; requiring certain information to be included in the notice; requiring notice to be served within specified time limits; requiring an insurer to provide a response to the notice within specified timeframe; providing for tolling of time if appropriate; requiring an insurer to investigate, review, and evaluate a dispute stated in the notice; requiring an insurer to investigate each claim in the notice in accordance with the Florida Insurance Code; requiring a court to dismiss without prejudice a claimant's suit under certain circumstances; providing for evidentiary requirements regarding the notice; prohibiting a court from awarding attorney fees to a claimant under certain circumstances; providing for attorney fees in certain circumstances; amending s. 628.801, F.S.; authorizing the office to request information from an insurer or its affiliates as reasonably necessary; authorizing the office to obtain staff to conduct examination at an insurer's expense; requiring insurers to pay examination expenses; giving the office the authority to examine all affiliates of an insurer as reasonably necessary to ascertain the

insurer's financial condition; prohibiting an examination of an insurer's affiliate from extending to specified investors under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 489.147, Florida Statutes, is created to read:

489.147 Prohibited property insurance practices.—

(1) As used in this section, the term:

(a) "Prohibited advertisement" means any written or electronic communication that encourages, instructs, or induces a consumer to contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage. The term includes, but is not limited to, door hangers, business cards, magnets, flyers, pamphlets, and e-mails.

(b) "Soliciting" means contacting:

1. In person;

2. By electronic means, including, but not limited to, e-mail, telephone, and any other real-time communication directed to a specific person; or

3. By delivery to a specific person.

(2) A contractor may not directly or indirectly engage in any of the following practices:

(a) Soliciting a residential property owner by means of a prohibited advertisement.

(b) Offering to a residential property owner a rebate, gift, gift card, cash, coupon, waiver of any insurance deductible, or any other thing of value in exchange for:

1. Allowing the contractor to conduct an inspection of the residential property owner's roof; or

2. Making an insurance claim for damage to the residential property owner's roof.

(c) Offering, delivering, receiving, or accepting any compensation, inducement, or reward, for the referral of any services for which property insurance proceeds are payable. Payment by the residential property owner or insurance company to a contractor for roofing services rendered does not constitute compensation for a referral.

(d) Interpreting policy provisions or advising an insured regarding coverages or duties under the insured's property insurance policy or adjusting a property insurance claim on behalf of the insured, unless the contractor holds a license as a public adjuster pursuant to part VI of chapter 626.

(e) Providing an insured with an agreement authorizing repairs without providing a good faith estimate of the itemized and detailed cost of services and materials for repairs undertaken pursuant to a property insurance claim. A contractor does not violate this paragraph if, as a result of the process

of the insurer adjusting a claim, the actual cost of repairs differs from the initial estimate.

(3) A contractor who violates this section is subject to disciplinary proceedings as set forth in s. 489.129. A contractor may receive up to a $10,000 fine for each violation of this section.

(4) For the purposes of this section:

(a) The acts of any person on behalf of a contractor, including, but not limited to, the acts of a compensated employee or a nonemployee who is compensated for soliciting, shall be considered the actions of the contractor.

(b) An unlicensed person who engages in an act prohibited by this section is guilty of unlicensed contracting and is subject to the penalties set forth in s. 489.13. Notwithstanding s. 489.13(3), an unlicensed person who violates this section may be fined up to $10,000 for each violation.

(5) A contractor may not execute a contract with a residential property owner to repair or replace a roof without including a notice that the contractor may not engage in the practices set forth in paragraph (2)(b). If the contractor fails to include such notice, the residential property owner may void the contract within 10 days after executing it.

Section 2. Paragraph (a) of subsection (2) of section 624.316, Florida Statutes, is amended to read:

624.316 Examination of insurers.—

(2)(a) Except as provided in paragraph (f), the office may examine each insurer, including affiliates, as often as may be warranted for the protection of the policyholders and in the public interest, and shall examine each domestic insurer not less frequently than once every 5 years. The examination shall cover the preceding 5 fiscal years of the insurer and shall be commenced within 12 months after the end of the most recent fiscal year being covered by the examination. The examination may cover any period of the insurer's operations since the last previous examination. The examination may include examination of events subsequent to the end of the most recent fiscal year and the events of any prior period that affect the present financial condition of the insurer.

Section 3. Subsection (2) of section 624.318, Florida Statutes, is amended to read:

624.318 Conduct of examination or investigation; access to records; correction of accounts; appraisals.—

(2) Every person, including an affiliate, being examined or investigated, and its officers, attorneys, employees, agents, and representatives, shall make freely available to the department or office or its examiners or investigators the accounts, records, documents, files, information, assets, and matters in their possession or control relating to the subject of the examination or investigation. An agent who provides other products or services or maintains customer information not

related to insurance must maintain records relating to insurance products and transactions separately if necessary to give the department or office access to such records. If records relating to the insurance transactions are maintained by an agent on premises owned or operated by a third party, the agent and the third party must provide access to the records by the department or office.

Section 4. Subsection (11) of section 624.424, Florida Statutes, is renumbered as subsection (12), and a new subsection (11) and subsection (13) are added to that section, to read:

624.424 Annual statement and other information.—

(11) Beginning January 1, 2022, each authorized insurer or insurer group issuing personal lines or commercial lines residential property insurance policies in this state shall file with the office on an annual basis in conjunction with the statements required by paragraph (1)(a) a supplemental report on an individual and group basis for closed claims. The report must be on a form prescribed by the commission and must include the following information for each claim closed, excluding liability only claims, within the reporting period in this state:

(a) The unique claim identification number.

(b) The type of policy.

(c) The zip code of the property where the claim occurred.

(d) The county where the claim occurred.

(e) The date of loss.

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(f) The peril or type of loss, including information about:

1. The types of vendors used for mitigation, repair, or replacement; and

2. The names of vendors used, if known.

(g) The date the claim was reported to insurer.

(h) The initial date the claim was closed, including information about whether the claim was closed with or without payment.

(i) The date the claim was most recently reopened, if applicable.

(j) The date a supplemental claim was filed, if applicable.

(k) The date the claim was most recently closed, if different from the initial date the claim was closed.

(l) The name of the public adjuster on the claim, if any.

(m) The Florida Bar number and name of the attorney for the claimant, if any.

(n) The total indemnity paid by the insurer.

(o) The total loss adjustment expenses paid by the insurer.

(p) The amount paid for claimant's attorney fees, if any.

(q) The amount paid in costs for claimant's attorney's expenses, including, but not limited to, expert witness fees.

(r) The contingency fee multiplier, if any, that the

claimant's attorney requested to be applied in calculating the attorney fees awarded to the claimant's attorney.

(s) The contingency risk multiplier, if any, that a court applied in calculating the attorney fees awarded to the claimant's attorney.

(t) Any other information deemed necessary by the commission to provide the office with the ability to track litigation and claims trends occurring in the property market.

(13) Each insurer doing business in this state which pays a fee, commission, or other financial consideration or payment to any affiliate directly or indirectly is required upon request to provide to the office any information the office deems necessary. The fee, commission, or other financial consideration or payment to any affiliate must be fair and reasonable. In determining whether the fee, commission, or other financial consideration or payment is fair and reasonable, the office shall consider, among other things, the actual cost of the service being provided.

Section 5. Subsection (6) of section 626.7451, Florida Statutes, is amended to read:

626.7451 Managing general agents; required contract provisions.—No person acting in the capacity of a managing general agent shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibility for a particular function, specifies

the division of responsibilities, and contains the following minimum provisions:

(6) The contract shall specify appropriate underwriting guidelines, including:

(a) The maximum annual premium volume.

(b) The basis of the rates to be charged.

(c) The types of risks which may be written.

(d) Maximum limits of liability.

(e) Applicable exclusions.

(f) Territorial limitations.

(g) Policy cancellation provisions.

(h) The maximum policy period.

~~This subsection shall not apply when the managing general agent is a controlled or controlling person.~~

For the purposes of this section and ss. 626.7453 and 626.7454, the term "controlling person" or "controlling" has the meaning set forth in s. 625.012(5)(b)1., and the term "controlled person" or "controlled" has the meaning set forth in s. 625.012(5)(b)2.

Section 6. Section 626.7452, Florida Statutes, is amended to read:

626.7452 Managing general agents; examination authority.—The acts of the managing general agent are considered to be the

acts of the insurer on whose behalf it is acting. A managing general agent may be examined as if it were the insurer ~~except in the case where the managing general agent solely represents a single domestic insurer~~.

Section 7. Subsection (15) is amended and subsection (20) is added to section 626.854, Florida Statutes, to read:

626.854 "Public adjuster" defined; prohibitions.—The legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(15) A licensed contractor under part I of chapter 489, or a subcontractor of such licensee, may not advertise, solicit, offer to handle, handle, or perform public adjuster services as provided in s. 626.854(1) ~~adjust a claim on behalf of an insured~~ unless licensed and compliant as a public adjuster under this chapter. The prohibition against solicitation does not preclude a contractor from suggesting or otherwise recommending to a consumer that the consumer consider contacting his or her insurer to determine if the proposed repair is covered under the consumer's insurance policy except as it relates to solicitation prohibited in s. 489.147. In addition ~~However~~, the contractor may discuss or explain a bid for construction or repair of covered property with the residential property owner who has suffered loss or damage covered by a property insurance policy, or the insurer of such property, if the contractor is doing so

for the usual and customary fees applicable to the work to be performed as stated in the contract between the contractor and the insured.

(20)(a) Any following act by a public adjuster, a public adjuster apprentice, or a person acting on behalf of a public adjuster or public adjuster apprentice is prohibited and shall result in discipline as applicable under part VI of this chapter:

1. Offering to a residential property owner a rebate, gift, gift card, cash, coupon, waiver of any insurance deductible, or any other thing of value in exchange for:

a. Allowing a contractor, a public adjuster, a public adjuster apprentice, or a person acting on behalf of a public adjuster or public adjuster apprentice to conduct an inspection of the residential property owner's roof; or

b. Making an insurance claim for damage to the residential property owner's roof.

2. Offering, delivering, receiving, or accepting any compensation, inducement, or reward for the referral of any services for which property insurance proceeds would be used for roofing repairs or replacement.

(b) Notwithstanding the fine set forth in s. 626.8698, a public adjuster or public adjuster apprentice may be subject to a fine not to exceed $10,000 per act for a violation of this subsection.

(c) A person who engages in an act prohibited by this subsection and who is not a public adjuster or a public adjuster apprentice, or is not otherwise exempt from licensure, is guilty of the unlicensed practice of public adjusting and may be:

1. Subject to all applicable penalties set forth in part VI of this chapter.

2. Notwithstanding subparagraph 1., subject to a fine not to exceed $10,000 per act for a violation of this subsection.

Section 8. Paragraphs (c) and (n) of subsection (6) of section 627.351, Florida Statutes, are amended, and paragraph (jj) is added to subsection (6) of that section, to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide

coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

g. Effective January 1, 2013, the corporation shall offer a basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and

conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is

subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of the agreements, pricing of the agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under

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the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer is voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the

financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of the state, one of whom is appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer representative by the Governor is deemed to be within the scope of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a.

a. The Governor, the Chief Financial Officer, the

President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance and be deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general

responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 20 ~~15~~ percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including

wind coverage unless rejected under subparagraph 8. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not

eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy

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written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal account, the

premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus must be available to defray deficits in that account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making

this determination and in establishing the criteria and procedures, the following must be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the provisions of chapter 120 do not apply.

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors. If catastrophe reinsurance is not available at reasonable rates, the corporation need not purchase it, but the corporation shall include the costs of reinsurance to cover its projected 100-year probable maximum loss in its rate calculations even if it does not purchase catastrophe reinsurance.

10. The policies issued by the corporation must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this

subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods continue to have access to coverage from the corporation. If coverage is sought in connection with a real property transfer, the requirements and procedures may not provide an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

13. Must provide that, with respect to the coastal account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more

of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must be paid in full within 15 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d. may not be limited or deferred.

14. Must provide that the corporation appoint as its licensed agents only those agents who throughout such appointments also hold an appointment as defined in s. 626.015 by an insurer who is authorized to write and is actually writing

or renewing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

15. Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

a. Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as those of the primary dwelling;

b. Carports that are aluminum or carports that are not covered by the same or substantially the same materials as those of the primary dwelling; and

c. Patios that have a roof covering that is constructed of materials that are not the same or substantially the same materials as those of the primary dwelling.

The corporation shall make available a policy for mobile homes

or manufactured homes for a minimum insured value of at least $3,000.

18. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

19. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

20. Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios that are directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

21. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgment signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE

CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.

a. The corporation shall maintain, in electronic format or otherwise, a copy of the applicant's signed acknowledgment and provide a copy of the statement to the policyholder as part of

the first renewal after the effective date of this subparagraph.

b. The signed acknowledgment form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

(n)1. Rates for coverage provided by the corporation must be actuarially sound and subject to s. 627.062, except as otherwise provided in this paragraph. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the

public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

~~4. The rate filings for the corporation which were approved by the office and took effect January 1, 2007, are rescinded, except for those rates that were lowered. As soon as possible, the corporation shall begin using the lower rates that were in effect on December 31, 2006, and provide refunds to policyholders who paid higher rates as a result of that rate filing. The rates in effect on December 31, 2006, remain in effect for the 2007 and 2008 calendar years except for any rate change that results in a lower rate. The next rate change that may increase rates shall take effect pursuant to a new rate filing recommended by the corporation and established by the office, subject to this paragraph.~~

4.~~5. Beginning on July 15, 2009, and annually thereafter,~~ The corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes~~, to be effective no earlier than January 1, 2010~~.

5.~~6. Beginning on or after January 1, 2010, and~~ Notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate

increase which, except for sinkhole coverage, does not exceed the following ~~10 percent~~ for any single policy issued by the corporation, excluding coverage changes and surcharges:

a. Eleven percent for 2022.

b. Twelve percent for 2023.

c. Thirteen percent for 2024.

d. Fourteen percent for 2025.

e. Fifteen percent for 2026 and all subsequent years.

6.~~7.~~ The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

7.~~8.~~ The corporation's implementation of rates as prescribed in subparagraph 5. ~~6.~~ shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing for each commercial and personal line of business the corporation writes.

(jj) The corporation's budget allocations for the compensation of all corporation employees and any proposed raise for an individual employee exceeding 10 percent of that employee's current salary must be approved by the board of governors. The corporation must have an overall employee compensation plan approved by the board of governors.

Section 9. Subsection (5) of section 627.3518, Florida

Statutes, is amended to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program by January 1, 2014.

(5) Notwithstanding s. 627.3517, any applicant for new coverage from the corporation is not eligible for coverage from the corporation if provided an offer of coverage from an authorized insurer through the program at a premium that is at or below the eligibility threshold established in s. 627.351(6)(c)5.a. Whenever an offer of coverage for a personal lines risk is received for a policyholder of the corporation at renewal from an authorized insurer through the program, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. In the event an offer of coverage for a new applicant is received from an authorized insurer through the program, and the premium offered exceeds the eligibility threshold contained in s. 627.351(6)(c)5.a., the applicant or insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. In the event an offer of coverage for a personal lines risk is received from an authorized insurer at renewal through the program, and the premium offered is more than the corporation's renewal premium for comparable coverage, the insured may elect to accept such

coverage, or may elect to accept or continue coverage with the corporation. Section 627.351(6)(c)5.a.(I) does not apply to an offer of coverage from an authorized insurer obtained through the program. An applicant for coverage from the corporation who was declared ineligible for coverage at renewal by the corporation in the previous 36 months due to an offer of coverage pursuant to this subsection shall be considered a renewal under this section if the corporation determines that the authorized insurer making the offer of coverage pursuant to this subsection continues to insure the applicant and increased the rate on the policy in excess of the increase allowed for the corporation under s. 627.351(6)(n)5. ~~s. 627.351(6)(n)6.~~

Section 10. Subsection (4) is added to section 627.428, Florida Statutes, to read:

627.428 Attorney fees.—

(4) In an award of attorney fees under this section for a claim arising under a property insurance policy, upon the request of an insured a court may apply a contingency risk multiplier in rare and exceptional circumstances as determined by the court based on a written finding that at least one of the following factors has been met:

(a) The type of property insurance claim in dispute is complex in nature and uncommon in occurrence.

(b) The property insurer has denied that the insured is entitled to coverage for the claim that is in dispute.

(c) The insured cannot find competent counsel within a reasonable distance from the location of the property that is the subject of the claim. At a minimum, reasonable distance includes the counties contiguous to the county where the property that is the subject of the claim is located.

(d) The difference between the insurer’s initial offer and the insured’s initial demand for damages to settle the loss was at least $5,000 or at least 15 percent of the difference, whichever is greater, and the insured recovered more than the initial offer.

(e) The amount of damages that the insured recovered for the claim exceeded the insurer's initial offer by at least 200 percent.

Section 11. Paragraph (c) of subsection (4) of section 627.7011, Florida Statutes, is redesignated as paragraph (d), and a new paragraph (c) is added to that subsection, to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.—

(4)

(c) An insurer that issues a homeowner's insurance policy or schedule providing that any loss that is repaired or replaced will be adjusted on the basis of actual cash value must:

1. Provide a policyholder with a form, approved by the office, that the policyholder must sign at the initial policy or schedule issuance, and must fully advise the policyholder of the

nature of the coverage being accepted if the policyholder chooses to purchase a policy providing actual cash value coverage. The signed form creates the conclusive presumption that there was an informed, knowing acceptance of actual cash value coverage and rejection of replacement cost coverage.

2. Include with the policy or schedule providing actual cash value coverage at the initial issuance and every renewal, in bold type no smaller than 18 points, the following statement:

"YOU ARE ELECTING TO PURCHASE COVERAGE ON YOUR HOME THAT PROVIDES THAT ANY LOSS THAT IS REPAIRED OR REPLACED WILL BE ADJUSTED ON THE BASIS OF ACTUAL CASH VALUE. THIS MEANS THAT DEPRECIATION IN THE VALUE OF YOUR LOST OR DAMAGED PROPERTY WILL BE CONSIDERED IN DETERMINING WHAT THE INSURER PAYS YOU FOR YOUR LOSS OR DAMAGE. BE ADVISED THIS MAY RESULT IN YOUR HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR PROPERTY. PLEASE DISCUSS WITH YOUR INSURANCE AGENT."

3. At least once every 3 years, provide a policyholder who has a policy or schedule providing actual cash value coverage with notice, on a form approved by the office, that replacement cost coverage is available.

Section 12. Section 627.70132, Florida Statutes, is amended to read:

627.70132 Notice of property insurance ~~windstorm or~~

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~~hurricane~~ claim.—

(1) As used in this section, the term:

(a) "Reopened claim" means a claim that an insurer has previously closed, but that has been reopened upon an insured's request for additional costs for loss or damage previously disclosed to the insurer.

(b) "Supplemental claim" means a claim for additional loss or damage from the same peril which the insurer has previously adjusted discovered while completing repairs or replacement pursuant to an open claim for which timely notice was previously provided to the insurer.

(2) A claim or reopened claim, but not a supplemental claim, ~~or reopened claim~~ under an insurance policy that provides property insurance, as defined in s. 624.604, including a property insurance policy issued by an eligible surplus lines insurer, for loss or damage caused by any ~~the~~ peril ~~of windstorm or hurricane~~ is barred unless notice of the claim~~, supplemental claim, or reopened claim~~ was given to the insurer in accordance with the terms of the policy within 2 ~~3~~ years after the date of loss ~~hurricane first made landfall or the windstorm caused the covered damage~~.

(3) For claims resulting from hurricanes, tornadoes, windstorms, severe rain, or other weather-related events that are tracked by weather services and media, the date of loss is the date that the hurricane made landfall, or the tornado,

windstorm, severe rain, or other weather-related event is verified by the National Oceanic and Atmospheric Administration or another disinterested verifiable third party to have occurred, in the location of the property that is the subject of the claim ~~For purposes of this section, the term "supplemental claim" or "reopened claim" means any additional claim for recovery from the insurer for losses from the same peril hurricane or windstorm which the insurer has previously adjusted pursuant to the initial claim~~.

(4) A supplemental claim is not barred as long as notice of that claim is given to the insurer while the claim to which the supplemental claim is related remains open.

(5) For the purposes of this section, a claim that an insurer has closed without providing an insured with the total amount due for the loss or damage is not considered a closed claim.

(6) This section does not affect any applicable limitation on civil actions provided in s. 95.11 for claims, supplemental claims, or reopened claims timely filed under this section.

Section 13. Paragraph (e) of subsection (9) of section 627.7015, Florida Statutes, is amended to read:

627.7015 Alternative procedure for resolution of disputed property insurance claims.—

(9) For purposes of this section, the term "claim" refers to any dispute between an insurer and a policyholder relating to

a material issue of fact other than a dispute:

(e) With respect to a ~~windstorm or hurricane~~ loss that does not comply with s. 627.70132.

Section 14. Section 627.70152, Florida Statutes, is created to read:

627.70152 Suits arising under a property insurance policy.—

(1) APPLICATION.—This section applies exclusively to all suits arising under a residential or commercial property insurance policy not brought by an assignee which is issued or renewed on or after July 1, 2021.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Claimant" means an insured who is filing suit under a residential or commercial property insurance policy.

(b) "Disputed amount" means the difference between the claimant's presuit settlement demand, not including attorney fees and costs listed in the demand, and the insurer's presuit settlement offer, not including attorney fees and costs, if part of the offer.

(c) "Judgment obtained" means damages recovered, if any, but does not include any amount awarded for attorney fees, costs, or interest.

(d) "Presuit settlement demand" means the demand made by the claimant in the written notice of intent to initiate litigation as required by paragraph (3)(e). The demand must

include the amount of reasonable and necessary attorney fees and costs incurred by the claimant, to be calculated by multiplying the number of hours actually worked on the claim, by the claimant's attorney as of the date of the notice by a reasonable hourly rate.

(e) "Presuit settlement offer" means the offer made by the insurer in its written response to the notice as required by subsection (4).

(3) CLAIMANT DUTIES AND NOTICE.—A claimant must timely:

(a) Cooperate with the insurer in the claim investigation.

(b) Provide the insurer with requested records and documents related to any services that have been provided.

(c) Provide the insurer with accurate and up-to-date estimates of the scope of work needed to be performed, including supplemental or additional repairs, if required.

(d) Allow the insurer to inspect, photograph, or evaluate, in a reasonable manner and at a reasonable time, the property that is the subject of the claim.

(e) As a condition precedent to filing a suit under a property insurance policy, provide the department with written notice of intent to initiate litigation on a form provided by the department. Such notice must be given at least 10 business days before filing suit under the policy, but may not be given before the 90-day period under s. 627.70131 has expired or the insurer has denied coverage, whichever is earlier. Notice to the

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insurer must be provided by the department to the e-mail address designated by the insurer under s. 624.422. The notice must state with specificity all of the following information:

1. That the notice is being provided pursuant to this section.

2. The alleged acts or omissions of the insurer giving rise to the suit, which may include a denial of coverage.

3. If provided by an attorney or other representative, that a copy of the notice was provided to the claimant.

4. If the notice is being provided to an insurer following a denial of coverage, the notice must also include an estimate of damages, if known.

5. If the notice is provided to an insurer following alleging an act or omission by the insurer other than denial of coverage, the notice must also include both of the following:

a. The presuit settlement demand, which must itemize the damages, attorney fees, and costs.

b. The disputed amount.

Documentation to support the information provided in this paragraph may be provided along with the notice to the insurer.

(f) Serve a notice of intent to initiate litigation within the time limits provided in s. 95.11. However, the notice is not required if the suit is a counterclaim. Service of a notice tolls the time limits provided in s. 95.11 for 10 business days

if such time limits will expire before the end of the 10-day notice period.

(4) INSURER DUTIES.—An insurer must have a procedure for the prompt investigation, review, and evaluation of the dispute stated in the notice and must investigate each claim contained in the notice in accordance with the Florida Insurance Code. An insurer must respond in writing within 10 business days after receiving the notice specified in subsection (3).

1. If an insurer is responding to a notice served on the insurer following a denial of coverage by the insurer, the insurer must respond by:

a. Accepting coverage;

b. Continuing to deny coverage; or

c. Asserting the right to reinspect the damaged property. If the insurer responds by asserting the right to reinspect the damaged property, it has 14 business days from the response asserting that right, to reinspect the property and accept or continue to deny coverage. If the insurer continues to deny coverage, the claimant may file suit without providing additional notice to the insurer.

2. If an insurer is responding to a notice provided to the insurer alleging an act or omission by the insurer other than a denial of coverage, the insurer must respond by making a settlement offer or requiring the claimant to participate in appraisal or another method of alternative dispute resolution.

The time limits provided in s. 95.11 are tolled as long as appraisal or other alternative dispute resolution is ongoing. However, if the appraisal or alternative dispute resolution has not been concluded within 90 days after the expiration of the 10-day notice of intent to initiate litigation specified in subsection (3), the claimant or claimant's attorney may immediately file suit without providing the insurer additional notice.

(5) DISMISSAL OF SUIT.—A court must dismiss without prejudice any claimant's suit relating to a claim for which a notice of intent to initiate litigation is given as required by this section if such suit is commenced before the expiration of the 10-day notice period.

(6) ADMISSIBILITY OF NOTICE AND RESPONSE.—The notice provided pursuant to subsection (3) and, if applicable, the documentation to support the information provided in the notice:

(a) Are admissible as evidence in a civil suit or an alternative dispute resolution proceeding relating to the claim for which the notice is given.

(b) Do not limit the evidence of attorney fees or costs, damages, or loss which may be offered at trial.

(c) Do not relieve any obligation that an insured or assignee has to give notice under any other provision of law.

(7) ATTORNEY FEES.—Notwithstanding any other provisions of law, in a suit arising under a residential or commercial

property insurance policy not brought by an assignee, attorney fees and costs may be recovered by a claimant only under s. 57.105, s. 627.428(4), and this section.

(a) If a court dismisses a claimant's suit pursuant to subsection (5), the court may not award to the claimant any incurred attorney fees for services rendered before the dismissal of the suit.

(b) The claimant is entitled to an award of reasonable attorney fees and costs as follows:

1. If the difference between the judgment obtained by the claimant and the presuit settlement offer, excluding reasonable attorney fees and costs, is less than 20 percent of the disputed amount, each party pays its own attorney fees and costs.

2. If the difference between the judgment obtained by the claimant and the presuit settlement offer, excluding reasonable attorney fees and costs, is at least 20 percent but less than 50 percent of the disputed amount, the insurer pays the claimant's attorney fees and costs equal to the percentage of the disputed amount obtained times the total attorney fees and costs.

3. If the difference between the judgment obtained by the claimant and the presuit settlement offer, excluding reasonable attorney fees and costs, is at least 50 percent of the disputed amount, the insurer pays the claimant's full attorney fees and costs.

(8) SUPPLEMENTAL OR REOPENED CLAIMS.—The time frames for

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giving notice of supplemental or reopened claims set forth in s. 627.70132 are tolled during litigation that is brought pursuant to this section.

Section 15. Subsection (3) of section 628.801, Florida Statutes, is amended to read:

628.801 Insurance holding companies; registration; regulation.—

(3) In addition to the powers which the office has under ~~Effective January 1, 2015, pursuant to~~ chapter 624 relating to the examination of insurers, the office may examine any insurer registered under this section and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

(a) The office may require any insurer registered under this section to produce such records, books, or other information and papers in the possession of the insurer or its affiliates as are reasonably necessary.

(b) The office may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the office's staff as shall be reasonably necessary to assist in the conduct of the examination under this subsection. Any persons so retained shall be under

the direction and control of the office and shall act in a purely advisory capacity.

(c) Each registered insurer producing for examination records, books, and papers pursuant to this subsection is liable for and shall pay the expense of examination in accordance with s. 624.320.

(d) The office shall have the power to examine the affiliates of the registered insurer. The scope of the examination of an insurer's affiliates under this subsection must be limited to information reasonably necessary. An examination of an insurer's affiliate under this section, unless reasonably necessary to ascertain the financial condition of the insurer, may not extend to the passive investors of affiliates in the holding company system which do not provide services directly or indirectly to the insurer or have direct or indirect relationships with the insurer.

Section 16. This act shall take effect July 1, 2021.

COMMERCE COMMITTEE

PCS for CS/HB 305 by Rep. Rommel
Insurance

AMENDMENT SUMMARY
April 23, 2021

Amendment 1 by Rep. Geller (Line 114): Eliminates public adjuster from the definition of prohibited advertisement so that the prohibition on advertising that encourages, instructs, or induces a consumer to contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage no longer applies to public adjusters.

Amendment 2 by Rep. Geller (Line 1316): Prohibits an insurer from applying a rate change to any homeowners' policy before December 31, 2021, and requires homeowners' policy rates to decrease by 6.2 percent during 2022, 2023, and 2024.

Amendment 3 by Rep. Rommel (Line 1016): Clarifies in the existing one-way attorney fees statute that attorney fees for property insurance litigation may only be recovered under s. 57.105, s. 627.428(4), and s. 627.70152, F.S.

Amendment 4 by Rep. Rommel (Line 1239): Establishes that a presuit notice is only admissible as evidence in a proceeding regarding attorney fees rather than for all civil suits and alternative dispute resolution.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Commerce Committee

Representative Geller offered the following:

Amendment

Remove line 114 and insert:

a consumer to contact a contractor for the

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Commerce Committee
Representative Geller offered the following:

Amendment (with title amendment)

Between lines 1316 and 1317, insert:

Section 16. Before December 31, 2021, a property insurer may not apply any rate change to an HO-3, HO-4, or HO-6 policy. During 2022, 2023, and 2024, the rate paid by a policyholder for an HO-3, HO-4, or HO-6 policy must decrease by at least 6.2 percent per year compared to a similar property insurance policy from the previous year with substantially the same coverage. The 6.2 percent rate reduction may be provided through rate decreases, discounts, or credits toward the insurance policy issued or renewed in years 2022, 2023, and 2024.

T I T L E A M E N D M E N T

Between lines 103 and 104, insert:

prohibiting rate changes in property insurance for certain policies before a specified date; requiring a minimum percent in policy rate reduction for specified years; providing possible types of rate reduction;

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee

Representative Rommel offered the following:

Amendment

Remove lines 1016-1017 and insert:

(4) Notwithstanding any other provisions of law, in a suit arising under a residential or commercial property insurance policy not brought by an assignee, attorney fees and costs may be recovered by a claimant only under s. 57.105, s. 627.70152, and this subsection. In an award of attorney fees under this subsection, upon the

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Commerce Committee

Representative Rommel offered the following:

Amendment

Remove lines 1239-1244 and insert:

(6) ADMISSIBILITY OF NOTICE AND RESPONSE.—The notice provided pursuant to subsection (3) and, if applicable, the documentation to support the information provided in the notice:

(a) Are admissible as evidence only in a proceeding regarding attorney fees.